Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

VIOLA TAYLOR, as Administratrix of the Estate of Jimmie Lee Mason, Jr., deceased,

Petitioner,

v.

LONNIE ADAMS, JAMES CONNICK, JACK TILLMAN, CRYSTAL THREADGILL and JULIAN DRISKELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has provided guidance as to the appropriate level of review an appeals court should conduct when considering the denial of summary judgment to a public official on the basis of qualified immunity. This Court has made clear that there should be no interlocutory review when it involves a determination of the "sufficiency of the evidence" as to what a public official knew at the time of his actions or inaction. *Johnson v. Jones*, 515 U.S. 304 (1995). The distinction between a determination as to what undisputed facts show a violation of a clearly established law, and a determination as to the correctness of a plaintiff's facts and reasonable inferences to be drawn therefrom must be made clear, as well as when an appellate court can decide non final decisions of a district court.

1. Whether the fire medics and a jail nurse are entitled to an interlocutory appeal on the issue of qualified immunity relating to the death of a pretrial detainee when there is a dispute as to what facts the fire medics were aware of at the arrest scene regarding the arrestee's medical condition.

2. Whether a county jail nurse is entitled to an interlocutory appeal on the issue of qualified immunity relating to the death of a pretrial detainee when she knew the decedent had a serious medical need, and refused to assist him after being told of the efforts other jail personnel had engage in attempting to revive the unconscious detainee.

3. Whether the collateral order doctrine provides an appeals court the authority to review a district court's denial of summary judgment relating to claims of state law immunities while reviewing a denial of federal qualified immunity, when the review involves an analysis of complex unsettled state law principles.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, from which this appeal is taken, is reported at *Taylor v. Adams, et al.*, 221 F.3d 1254 (11th Cir. 2000), and appears at Appendix A ("App A") hereto. The District Court Findings of Fact and Conclusions of Law, which are unreported, appear as Appendix B ("App B") and Appendix C ("App C") hereto.

STATEMENT OF JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on August 11, 2000.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1). This Petition is timely filed under 28 U.S.C. § 2101(c).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Amendment VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make

or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This appeal was brought seeking interlocutory review of the district court's denial of Appellants' qualified immunity defense. However, while such orders are usually subject to an interlocutory appeal, in *Johnson v. Jones*, 515 U.S. 304 (1995), this Court held that denials of summary judgement based on qualified immunity are *not* immediately appealable if they determine only a question of evidence sufficiency. Here, the Appellants are arguing factually what they knew or did not know relative to the decedent's (Jimmie Mason) medical condition at the time of his arrest, and attempted admission into the Metro Jail, and the appellate court is reviewing the facts and the inferences from the facts so as to make a determination as to what the Appellants knew.

The appeals court did not stop its review with a decision regarding the denial of qualified immunity, it moved on to decide the issue regarding whether the Appellants who are employed as municipal fire medics, are protected from tort liability due to Alabama's so-called "Good Samaritan" statute. Ala. Code Section 6-5-332. As well as an issue involving Alabama law relating to a claim of discretionary function immunity. In dealing with this issue, the district court correctly noted that a clear reading of Alabama law reveals that this type of immunity from tort liability has not been extended to municipal firefighters.

This Court held in *Swint v. Chambers*, 514 U.S. 35 (1995), that a federal court of appeals lack pendent party appellate jurisdiction, and in *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993) set guidelines for so called "collateral orders" review. One such guideline require that the collateral order be one that is unreviewable on appeal from a final judgment.

A. Background Facts

On August 23, 1995, Plaintiff's decedent, Jimmy Lee Mason, Jr., ("Jimmie") was suspected of shoplifting at a K&B Drug Store in Mobile. As Jimmie left the store, two K&B employees chased him for a short distance, apprehended Jimmie, and held him face down on the ground until the police arrived. (Report of Police Officer Laurence Harvey at 1).

Meanwhile, members of the community who had witnessed the chase gathered at the scene, including Jimmie's next door neighbor, Ms. Janet Britton. While Jimmie was lying on the ground, Ms. Britton observed some foamy substance about his mouth area, and a glazed expression on his face. Knowing that Jimmie suffers from seizures, and recognizing that Jimmie might be going into, or coming out of a seizure, she instructed her daughter, Alicia, to call "911." (Affid of J. Britton, and Transcript of Dispatch. at 1-3).

Several police officers responded to the call including Laurence Harvey, Richard Chambless, and Douglas Parmenter. (Report of Harvey at 1). Responding for the fire medics was the crew of Engine No. 9, which included Appellants James Connick, Lonnie Adams and Captain Jed Driskell. (Connick's Dep. at 29-30).

Upon their arrival at the scene, the police officers observed Jimmie lying face down on the ground with one of the K&B employees straddling him with knees on either side of Jimmie, and the employee's torso on Jimmie's back. (Harvey's Dep. at 14-15 and Chambless' Dep. at 12). Jimmie was released into the custody of the police, and Officer Chambless placed handcuffs on him while he was still lying face down on the ground. There was no struggle or resistance on the part of Jimmie. (Chambless' Dep. at 16-17).

During this time, Ms. Britton was informing the police and fire medics that Jimmie was either coming out of a seizure, or was about to go into one and should be taken to a doctor or hospital immediately. (Janet Britton's Aff. at 1-2). According to Ms. Britton, the police and fire medics ignored her repeated pleas that Jimmie be given medical treatment immediately.

After Jimmie was cuffed and pulled to his feet, the police and fire medics observed that he was sweaty and appeared to be "out of breath" to the point of exhaustion. (Report of Chambless); (Adam's Dep. at 25-26); and (Harvey's Dep. at 18). Officer Chambless then asked Jimmie if he was okay, and Jimmie replied that his stomach was hurting. (Chambless Dep. at 21); (Harvey's Dep. at 18). Also, a young man from the neighborhood advised the police that Jimmie was a local guy and that he was on medication for mental problems. (Harvey's Dep. at 23). Even though he was informed that Jimmie was on medication, Officer Harvey did not follow up on this information, nor could he recall whether he had passed this crucial information on to the fire medics. (Harvey's Dep. at 24). Chambless tried to question Jimmie initially, but did not receive any response from him at all. He then started asking members of the crowd that had gathered whether they knew Jimmie's name. Jimmie later repeated his complaint that his stomach was hurting, and Officer Chambless stated that he then informed the fire medics of Jimmie's complaint and asked them to check him out. (Chambless Dep. at 22); (Harvey's Dep. at 21).

However, all the fire medics stated that they were never informed that Jimmie was suffering from stomach pains. (Connick's Dep. at 34); (Adam's Dep. at 48); (Driskell's Response to Plaintiff's Request for Admissions ¶ 3). Connick

was the only fire medic who had any significant contact with Jimmie, and he admitted that the only thing he did at the scene was to ask Jimmie if he was okay. (Connick's Dep. at 32-33). He did not render any physical examination such as taking blood pressure or pulse, or any other vital signs. (Connick's Dep. at 38). Connick stated that he did not talk to the police officers nor have any contact with them. (Connick's Dep. at 34). As a matter of fact, Fire medic Adams testified that the fire medics were on the scene for no more than five to six minutes. (Adam's Dep. at 13). Adams testified that he was so concerned with the appearance of Jimmie on that day that he went back to Jimmie after Fire medic Connick had talked to him, to ask him again if he was okay. (Adam's Dep. at 25). In his opinion, Adams felt that Jimmie needed to be checked out. (Adam's Dep. at 41).

Adams knew that sweating and heavy breathing are symptoms of a seizure, and that he considers a seizure to be a serious situation that would warrant calling paramedics. (Adam's Dep. at 45-46, 49-50). Adams and Connick both would have taken vital signs had they been informed that Jimmie was suffering from stomach pains. (Adam's Dep. at 47-48); (Connick's Dep. at 42). However, in his Response to Plaintiff's Interrogatories, Capt. Driskell, the supervisor of Engine #9, stated that he recalled some comments being made that Jimmie had complained of stomach pains. (Response of Captain Driskell to Plaintiff's Interrog. ¶ 2).

Jimmie was finally placed in the police paddy wagon in the custody of Officer Harvey, to be transported to the Mobile Metro Jail. (Harvey's Dep. at 25). At the time he was placed in the van Jimmie was sitting on the floor of the van in an upright position, leaning against one of the two benches that ran along each side of the van. (Harvey's Dep. at 31). While

inside the van, Officer Harvey again asked Jimmie if he was "okay," and Jimmie gave a "grunt", which Harvey interpreted to mean that he was okay. (Harvey's Dep. at 33). Harvey later tried several times to get some information from Jimmie, but Jimmie was **unable** to answer coherently. (Harvey's Dep. at 33).

Officer Harvey arrived at the Metro Jail approximately eleven minutes after departing the arrest scene. (Harvey's Dep. at 37, 41). Once at the jail, Harvey pulled into the sallyport area and walked to the rear of the paddy wagon to get Jimmie. When he opened the doors he saw Jimmie lying on his side. Harvey then "tapped" Jimmie's foot and got no response. (Harvey's Dep. at 41). Harvey summoned a correctional officer who was standing nearby for assistance. (Harvey's Dep. at 42). After shaking Jimmie's leg in an attempt to arouse him without success, he summoned two other corrections officers, to whom he briefly explained the situation about how Jimmie had been running from K&B employees. (Harvey's Dep. at 47).

Harvey and Corrections Sgt. Keith Turner then got into the back of the van in an attempt to get Jimmie's arouse. (Harvey's Dep. at 47-48). Once inside the van, Officer Harvey proceeded to rub Jimmie's sternum a couple of times without any response. (Harvey's Narrative Form dated August 23, 1995) and (Harvey's Dep. at 48). After getting no response from Jimmie, Sgt. Turner then suggested that they splash water on his face. (Harvey's Dep. at 48). After splashing water on Jimmie without any response, Nurse Crystal Threadgill was summoned by one of the corrections officers. (Harvey's Dep. at 50).

When Nurse Threadgill arrived at the docket room, she was informed by Sgt. Turner that he had splashed water on Jimmie without any response. (Nurse Threadgill's Dep. at 36). Nurse Threadgill observed that it was hot inside the paddy wagon (Threadgill's Dep. at 41), and proceeded to ask Officer Harvey about what had happened to Jimmie prior to his arrival at the jail. (Threadgill's Dep. at 78). Nurse Threadgill became upset and told Officer Harvey that Jimmie should never have been brought to the jail without first going to the hospital.

To the amazement of the officers present at the scene, Nurse Threadgill, without even touching Jimmie or putting a stethoscope on him or examining him in any way, told Officer Harvey that Jimmie needed to go to the hospital and walked away, while murmuring that it was not her duty to treat Jimmie. (Harvey's Dep. at 50-51). Even though Jimmie was lying in the back of the van unconscious, and even though Officer Harvey testified that one could presume that Jimmy was coming out of a seizure (Harvey's Dep. at 54), Nurse Threadgill did not summon an ambulance for the trip to the hospital or provide any medical assistance whatsoever.

According to Nurse Threadgill, even though Jimmie was unconscious, her refusal to treat or accept Jimmie was based on the Metro Jail's policy of not accepting semi-conscious or unconscious incoming detainee. (Threadgill's deposition at 66). Jimmie was later transported by Harvey to the hospital without sirens or lights. He was later pronounced dead shortly upon arrival at the hospital. (Harvey's Dep. at 70-71).

B. The Proceedings Below

The Petitioner/Appellee is the administratrix of the estate of her brother, Jimmie Lee Mason, deceased. Petitioner filed suit against the City of Mobile, three police officers, three fire medics, Mobile County, the Sheriff of Mobile County and a nurse employed at the Mobile Metro Jail, which is operated by the Sheriff of Mobile County.

Petitioner alleged in her complaint and amended complaint that the defendants violated Jimmie Mason's constitutional rights by depriving him of appropriate medical care with deliberate indifference to his serious medical need. Petitioner had also alleged that the Sheriff had violated Jimmie's rights by failing to properly instruct, supervise and control the jail nurse while attending to the medical needs of in-custody inmates, which resulted in the death of Jimmie Mason.

Mobile County was dismissed by agreement, the three police officers were granted summary judgment by the district court, and the City of Mobile was granted summary judgment on all claims arising out of 42 U.S.C. § 1983. The district court denied the City of Mobile summary judgment on Petitioner's state law claims of negligence, and denied the three fire medics, the jail nurse and the Sheriff's claim of federal qualified immunity, and state law immunity claims.

The Sheriff, the jail nurse and the three fire medics all gave timely notice of appeal to the Eleventh Circuit Court of Appeals, which rendered a decision reversing the denial of summary judgment for all Appellants on all grounds, qualified immunity and state law immunity.

REASONS FOR GRANTING THE WRIT

APPELLANTS' QUALIFIED IMMUNITY APPEAL INVOLVED A SUFFICIENCY OF THE EVIDENCE REVIEW WHICH IS PROHIBITED BY THE DECISIONS OF THIS COURT, AND THE APPELLATE COURT REVIEWED RULINGS OF THE DISTRICT COURT ON STATE LAW CLAIMS THAT DID NOT CONSTITUTE A FINAL ORDER.

Generally, a Federal Court of Appeals has jurisdiction to entertain an interlocutory appeal of a district court's order denying a claim of qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). However, there is an exception to this general rule. Each argument raised by the Appellants regarding their entitlement to qualified immunity relate principally to a dispute as to whether Petitioner has adduced sufficient evidence to establish a violation under the Eighth and Fourteenth amendments to the United States Constitution. Under these circumstances, notwithstanding the general rule of *Mitchell v. Forsyth*, that denials of qualified immunity are immediately appealable, the appellate court lacked jurisdiction. In *Johnson v. Jones*, 515 U.S. 304 (1995) this Court held that denials of summary judgement based on qualified immunity are *not* immediately appealable if they determine only a question of evidence sufficiency, i.e., which facts a party may, or may not, be able to prove at trial.

All of the Appellants argue that Taylor did not show, and therefore cannot prove, that they appreciated the severity of the decedent's medical condition, and therefore, they could not have been deliberately indifferent to his serious medical need. The Appellants argue that the District Court's opinion only talks in terms of what they "should" have known, and

not what they did know. However, a fair and objective reading of the Court's opinion clearly shows that Officer Harvey's statement to Nurse Threadgill was to the effect that the decedent was fine a moment ago because he was talking; the Correctional Officer that summoned Nurse Threadgill to the location of the decedent advised her of the efforts that had already been taken to revive Jimmie; and, when she arrived in the sally-port and saw Jimmie first hand, she immediately knew that he was unconscious and did absolutely nothing to attempt to determine the why, or to stabilize his condition for his trip to the hospital.

These parties argue that Sheriff Tillman and metro jail had a policy that sick or injured suspects would not be admitted into the jail without a doctor's certification. However, at least two Corrections Officers assisted in the efforts to revive Jimmie, and it was one of these individuals that saw the need, from a layman's point of view, for a medical person and sent for Nurse Threadgill. Nurse Threadgill, being a medically trained individual, and receiving the same facts that the Corrections Officers had been advised of, and information relating to their own efforts regarding Jimmie, she better than any member of the group gathered there in the sally court knew the seriousness of the fact that Jimmie was unconscious and could not be revived. But yet, she simply refused to render any assistance, and in fact, became angry that the Officer would even present a suspect in that condition to the jail for admission. This clearly shows a conscious intentional act not to render assistance if for no other reason than "it's not my job, and you shouldn't have brought him here anyway because you should have known better."

It is axiomatic that a deliberate indifference to the medical needs of an inmate violates the Eighth Amendment prohibition against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). In *Estelle*, this Court explained the rationale for this rule by holding that "[A]n inmate must rely on prison authorities to treat his medical needs, if the authorities fail to do so, those needs will not be met." *Estelle*, 429 U.S. at 103, 97 S. Ct. at 290. This Court has held that where an official knows of and disregards the possibility of a substantial risk of harm to an inmate's health or safety, that constitutes a deliberate indifference to that inmates medical needs. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994). Under *Farmer*, it is enough to find deliberate indifference, and therefore, a violation of the Eighth Amendment, if in light of knowledge of a substantial risk of serious harm, an official failed to act.

According to *Farmer*, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Farmer*, 511 U.S. 835.

Likewise, the Eleventh Circuit has repeatedly stated that "when the need for medical treatment is obvious, medical care that is so cursory as to amount to no treatment at all may constitute deliberate indifference. *Adams v. Poag*, 61 F.3d 1537 (11th Cir. 1995) (citing *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985)).

> Whether [an official] had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . . and a fact finder may conclude that

> [an official] knew of a substantial risk from the very fact that the risk was obvious.

Farmer, 511 U.S. at 842.

Appellants contend that Taylor has failed to produce evidence that the three fire medics (Driskell, Adams, or Connick) knew that Jimmie had a substantial risk of harm on August 23, 1995, and therefore, they are entitled to summary judgment on qualified immunity basis.

A. James B. Connick

On August 23, 1995, James Connick was a firefighter who was licensed as an Emergency Medical Technician by the State of Alabama. (Connick's Dep. at 7). As an Emergency Medical Technician, part of his training consisted of recognizing symptoms of seizures and heart attacks. (Connick's Dep. at 14). Mr. Connick was one of the three Emergency Medical Technicians on Fire Engine #9, dispatched to the scene of Jimmie's arrest. (Connick's Dep. at 27).

Upon arriving at the scene of the arrest, Connick observed that Jimmie was breathing hard and sweaty. (Connick Dep. at 47). Police officer Chambless told the fire medics that Jimmie had complained of stomach pains. (Chambless Dep. at 22). Also, Jimmie's neighbor and other members of the community gather in a crowd stated that they informed the police and the fire medics that Jimmie was either coming out of a seizure, or was about to go into one, and was taking medications for his medical condition.

Connick's only action toward Jimmie was ask if he was "fine", Connick did not perform any physical examination. (Connick's Dep. at 41). He did not check Jimmie's blood pressure or take any other vital signs. (Connick's Dep. at 38, 41). Connick testified that *had* he been informed that Jimmie was complaining of stomach pains, he would have at least taken his vital signs and inform Captain Driskell that it was an **emergency**, and that the Captain would have summoned a paramedic truck (ambulance). (Connick's Dep. at 42). According to Connick, he was the only officer from Fire Engine #9, who had any "significant contact" with Jimmie on that day. (Connick's Dep. at 33, 36). After Jimmie allegedly told him that he was "fine," Connick went back and informed Captain Driskell that Jimmie was okay, and said they could go. (Connick's Dep. at 35). Officer Connick testified that the fire medics were on the scene no more than two or three minutes. (Connick's Dep. at 48).

This testimony obviously conflicts with the statements of police officers and community folks who stated that the fire medics had been told of the pains and the appearance of seizure activity. Even Capt. Driskell later admits that he recalled someone commenting that "Jimmie had complained that his stomach was hurting." A reasonable jury should have the duty of determining the true facts.

B. Lonnie Adams

Like Connick, Adams was one of the Emergency Medical Technicians on board Fire Engine #9 that was dispatched to the scene, and upon his arrival, he saw a K&B employee straddling Jimmie between his knees. Adams saw Jimmie sweating and breathing hard, and was so concerned that he asked him a second time whether he was okay. In his

opinion, Adams felt that Jimmie needed to be "checked out." (Adams' Dep. at 39). Connick states that he was the only fire medic to have any "significant contact with Jimmie", yet Adams, with no significant contact was of the opinion that Jimmie needed to be "checked out."

Adams knew that sweating and heavy breathing were symptoms of a seizure. Had he been informed that Jimmie had suffered a seizure, he would have considered that to be a medical emergency and would have at least taken Jimmie's vital signs. (Adams Dep. at 47-48). He would also have summoned an ambulance to the scene. Adams stated that none of the police officers said anything about "stomach pains" to him, and that not one on the other fire medics mentioned anything to him about Jimmie complaining of stomach pains, or that somebody had mentioned the fact that Jimmie was on medication. (Lonnie Adams Dep. at 49-50). It this is to be believed, a reasonable jury can conclude that Adams was aware that Jimmie needed to checked out even without the benefit of this more detailed information. In other words, Jimmie's appearance alone suggested a need for further examination, just as Ms. Britton stated that "Jimmie appeared to be coming out of or going into a seizure."

The police also stated that they heard members of the community informing the officers at the scene about Jimmie's condition, and the fact that he was on medication. (Harvey's Dep. at 23). And as already stated, Captain Driskell recalled some comment being made that Jimmie had said that his stomach was hurting. (Driskell's Response to Plaintiff's First Set of Interrogatories ¶ 2).

C. Captain Driskell

Driskell was the Captain of Fire Engine #9, and upon his arrival at the arrest scene, he observed that Jimmie was sweating and breathing hard. Also while at the scene, Captain Driskell recalled that someone at the scene made a comment that Jimmie had complained that his stomach was hurting. (*Id.*)

The policemen stated that they specifically informed the firemen that Jimmie had complained about stomach pains, and that they should check him out. (Chambless Dep. at 65). According to police Officer Chambless, the fire medics left the scene without examining Jimmie. (Chambless Dep. at 64).

Taylor's expert, Dr. Gary Pfortmiller, stated that as the supervisor at the scene, upon being informed that Jimmie had complained of stomach pains, Capt. Driskell had a duty to either examine Jimmie personally, or direct one of his subordinates to examine him. (Dr. Pfortmiller's Dep. at 174-175). As stated earlier, both Adams and Connick stated that Driskell did not informed them that Jimmie had complained of stomach pains, and had they been so informed, they would have at least taken his vital signs and summon an ambulance. (Id.)

All of the fire medic Appellants had subjective knowledge that there was a great need to do more for Jimmie. The police officers stated that they specifically informed the fire medics that Jimmie had complained of stomach pains and that they should examine him. Likewise, Ms. Britton asked her daughter to summon the fire medics, and stated in her affidavit that she had informed them that Jimmie was

either coming out of a seizure, or was about to go into one, and Captain Driskell himself stated that he recalled someone saying that Jimmie had complained of stomach pains.

As Dr. Pfortmiller stated, if the fire medics were informed of Jimmie's serious medical needs, then they had a duty to at least perform a physical examination on him. The Appellants' own testimonies supports this conclusion. Both Connick and Adams stated that had they been informed that Jimmie had complained of stomach pains, they would have at least taken his vital signs.

Taylor understands that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982). In making a determination as to whether Appellants are entitled to qualified immunity, the relevant inquiry should be whether the unlawfulness of Appellants' conduct is apparent, in light of pre-existing law. *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 3039 (1987).

As previously discussed, this Court has held that where an official knows of and disregards the possibility of a substantial risk of harm to an inmate's health or safety, then that constitutes a deliberate indifference to that inmates medical needs. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994). Under *Farmer*, it is enough to find deliberate indifference, and therefore, a violation of the Eighth Amendment, if in light of knowledge of a substantial risk of serious harm, an official failed to act.

It is undisputed that despite information being provided to the Appellants, they did not do a routine check of vital signs. Connick was the only fire medic who had any significant contact with Jimmie, and he did not perform any physical examination. Also, Adams stated that he knew that sweating and heavy breathing were symptoms of a seizure, and was so concerned about Jimmie's appearance that he asked him a second time whether he was okay. According to both Connick and Adams, had they been informed that Jimmie had complained of stomach pains, they would have at least performed vital signs on him and summoned an ambulance.

Therefore, there can be no doubt that the need for medical treatment was obvious from mere observation, as well as the fact that the officers were informed of the complaints of pain, the medication needs, the mental problems, and seizure history. The treatment rendered by these Appellants to Jimmie was so cursory that it amounted to a "deliberate indifference" to his medical needs.

D. Crystal Threadgill

Nurse Threadgill has asserted that there is no evidence of either an objective or subjective knowledge on her part of Jimmie Mason's serious need for medical care so as to compel her to provide assistance to Jimmie, and thus, she was not deliberately indifferent to his medical needs.

After Threadgill was summoned and on her way to the sallyport area, she was informed by Sgt. Turner that he and Officer Harvey had tried to revive Jimmie by splashing water on him, and they could not get a response.

Upon entering the sallyport area, Threadgill stood back at a distance of about two to three feet away, and with her hands behind her back, bent over Jimmie, and without touching him in any way, informed Officer Harvey that Jimmie needed to go to the hospital. (Harvey's Deposition at 50). According to Threadgill, her decision **not** to render any medical treatment to Jimmie, even though he was unconscious, was based on the policy of the Metro Jail. (Threadgill's Deposition at 44, 66). Her actions had nothing to do with a failure to appreciate the serious need for medical attention. Nurse Threadgill stated that she was also aware of the Metro Jail's policy that an injured or unconscious arrestee was to be **assessed** in triage by the nurse on duty, in order to determine that arrestee's need for treatment, and this was not done by Threadgill. (Threadgill's Deposition at 71).

Therefore, it is simply amazing that Nurse Threadgill can argue that she was not deliberately indifferent to the medical needs of Jimmie, when she knew that he was unconscious; and yet failed to render any kind of help. She made her decision that Jimmie should be taken to the hospital based on her awareness that Jimmie Mason was unconscious, and based on the policy of the jail, not because she failed to recognize the seriousness of the medical problem presented. The severity of the problem did not matter since the jail policy was being violated.

CONCLUSION

The Eleventh Circuit Court of Appeals exceeded its authority by engaging in a weighing of the evidence in an effort to determine its sufficiency, contrary to the decisions of this Court, and the appeals court proceeded further to decide rulings on state law claims that were not final orders subject to interlocutory review. The judgment of the appeals court is due to be reversed and remanded.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED AUGUST 11, 2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-6195
D. C. Docket No. 97-00778-CV-CB-M

VIOLA TAYLOR, as Administratrix of the Estate of Jimmie Lee Mason, Jr., deceased,

Plaintiff-Appellee,

versus

LONNIE ADAMS, JAMES CONNICK, et al.,

Defendants-Appellants.

No. 99-6201
D. C. Docket No. 97-00778-CV-CB-M

VIOLA TAYLOR, as Administratrix of the Estate of Jimmie Lee Mason, Jr., deceased,

Plaintiff-Appellee,

v.

CRYSTAL THREADGILL, JACK TILLMAN, Sheriff Jack Tillman,

Defendants-Appellants.

Appendix A

Appeals from the United States District Court
for the Southern District of Alabama
(August 11, 2000)

Before COX and HULL, Circuit Judges, and GEORGE*, District Judge.

COX, Circuit Judge:

This is an appeal from the denial of summary judgment, sought on various immunity grounds, to three firemen and a jail nurse on claims arising from the death of Jimmie Lee Mason, Jr. We reverse.

Background

On a hot August day in 1995, employees of a Mobile, Alabama drugstore chased Jimmie Lee Mason, a suspected shoplifter, several blocks before finally apprehending him. They held Mason to the ground until police arrived. After the police handcuffed the sweaty and heavy-breathing Mason, a crew of three medically trained Mobile firemen — the defendants Driskell, Connick, and Adams (the "firemedics") — arrived. Each of the firemedics asked Mason if he was okay or required help and received a negative response; the firemedics then left the scene without providing treatment.

A police officer subsequently transported Mason to the Mobile County Jail in the back of a paddy wagon. After a drive of approximately eleven minutes, the paddy wagon

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* Honorable Lloyd D. George, U.S. District Judge for the District of Nevada, sitting by designation.

arrived at the jail courtyard. When police opened the back door of the wagon, they found Mason unconscious, and they could not rouse him despite shaking his leg, rubbing his chest, and splashing water on his chest. They then summoned the jail's registered nurse.

As Nurse Threadgill walked toward the wagon, the police told her about Mason's unconsciousness and their attempts to wake him. At a distance of about three feet from Mason, Threadgill looked inside the van and promptly instructed the police to take Mason to the University of South Alabama Medical Center. The police did so without lights or sirens, and Mason died en route.[1]

Viola Taylor, administratrix of Mason's estate, sued a host of public officials involved with the incident. She alleged, in relevant part, violations of the Cruel and Unusual Punishment Clause, actionable under 42 U.S.C. § 1983, and supplemental negligence claims under Alabama law. Included in the complaint were claims against the "Sheriff of Mobile County, Alabama." (R.1-12 at 4.) Despite some ambiguity that arose at intermediate points during the

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1. The appellants frame their arguments as challenging only the legal conclusions the district court reached in denying these defendants immunity. They therefore urge us to "simply take, as given, the facts that the district court assumed when it denied summary judgment for . . . (purely legal) reason[s]." *Johnson v. Jones*, 515 U.S. 304, 319, 115 S. Ct. 2151, 2159 (1995). Thus, we have looked no further than the district court's opinion for these background facts as well as other facts of the case we will later discuss. *See Johnson v. Clifton*, 74 F.3d 1087, 1091 (11th Cir. 1996) (noting this approach as authorized in *Johnson v. Jones*). We refer to these facts as the summary-judgment facts.

litigation, counsel for Taylor conceded at oral argument that she sued the sheriff only in his official capacity; there were no personal claims against Jack Tillman, the sheriff at the time of Mason's death. In their official capacity, however, Alabama sheriffs operating jails are state officers protected by Eleventh Amendment immunity. *See Marsh v. Butler County, Alabama*, 212 F.3d 1318, 1321 (11th Cir. 2000). Thus, we affirm summary judgment for the Sheriff of Mobile County on Eleventh Amendment-immunity grounds. The only remaining defendants who are parties to this appeal, the three firemedics and Threadgill, seek review of the district court's denial of summary judgment in their favor on federal- and state-law immunity grounds.

Discussion

The firemedics contend that the district court erred by denying them qualified immunity with respect to the federal-law claim against them and by denying them both "Good Samaritan" and discretionary-function immunity with respect to the state-law claims, while Threadgill argues that the district court erred by denying her qualified immunity. Taylor responds simply that the district court acted correctly in denying summary judgment. The propriety of summary judgment on each of the immunity defenses is a question of law, which we review de novo. *See Sanders v. Howze*, 177 F.3d 1245, 1248 (11th Cir. 1999) (qualified immunity); *Sheth v. Webster*, 145 F.3d 1231, 1236-40 (11th Cir. 1998); *Griesel v. Hamlin*, 963 F.2d 338, 341 (11th Cir. 1992) (together addressing state-law immunity doctrines).[2]

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2. Taylor also contends that this court lacks appellate jurisdiction over the federal claim under the collateral-order doctrine. We reject this argument as meritless.

Appendix A

Qualified Immunity on the Deliberate-Indifference Claims

We begin our review of a denial of qualified immunity by discussing " 'whether the plaintiff has alleged the deprivation of an actual constitutional right at all,' " *Wilson v. Layne*, __ U.S. __, __, 119 S. Ct. 1692, 1697 (1999) (quoting *Conn v. Gabbert*, 526 U.S. __, __, 119 S. Ct. 1292, 1295 (1999)), but we may ultimately decide the propriety of the denial on either of two alternative bases: first, on our answer to the question whether there is "an underlying constitutional violation," *Campbell v. Sikes*, 169 F.3d 1353, 1361 (11th Cir. 1999), or second, on our determination whether the law the public official is alleged to have violated was "clearly established" at the time of incidents giving rise to the suit, *id. See, e.g., Layne*, __ U.S. __, 119 S. Ct. at 1695 (holding defendants entitled to qualified immunity despite their unconstitutional conduct because of the lack of clearly established, preexisting law governing that conduct). If either question is properly answered in the negative, then qualified immunity must be granted. *Campbell*, 169 F.3d at 1361-62. Here, we hold that summary judgment should have been granted to both the firemedics and Threadgill because they did not violate the Constitution.

The Eighth Amendment prohibits infliction of "cruel and unusual punishments." U.S. Const. amend. VIII.[3] Stating a

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3. Mason was a pretrial detainee. As such, his Cruel and Unusual Punishment claims sound properly in the Fourteenth Amendment right to due process of law rather than in the Eighth Amendment. *See Lancaster v. Monroe County, Alabama*, 116 F.3d

(Cont'd)

claim under the clause thus requires satisfying two minima (from which the case law has ultimately derived four requirements): First, there must be, objectively speaking, conduct by public officials "sufficiently serious" to constitute a cruel or unusual deprivation — one "denying 'the minimal civilized measure of life's necessities.' " *Wilson v. Seiter*, 501 U.S. 294, 298, 111 S. Ct. 2321, 2324 (1996) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 2399 (1981)). Second, there must be a subjective intent by the public officials involved to use the sufficiently serious deprivation in order to punish. *See id.* at 300, 111 S. Ct. at 2325 ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify." (emphasis in original)).

(Cont'd)
1419, 1425 n.6 (11th Cir. 1997) (comparing *Bell v. Wolfish*, 441 U.S. 520, 535 n.16, 99 S. Ct. 1861, 1872 n.16 (1979) (due process violation), with *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976) (Eighth Amendment violation)). Nevertheless, his claims — that the firemedics and Threadgill inflicted cruel or unusual punishment on him through deliberate indifference to his serious medical needs — are analyzed in identical fashion regardless of whether they arise under the Due Process Clause or the Cruel and Unusual Punishment Clause. *See id.* (citing *Hamm v. DeKalb County*, 774 F.2d 1567, 1573-74 (11th Cir. 1985)); *Belcher v. City of Foley, Alabama*, 30 F.3d 1390, 1396 (11th Cir. 1994) (also citing *Hamm*). We thus look to those cases specifying the contours of an Eighth Amendment deliberate-indifference claim to determine the elements Taylor must satisfy here.

In the context applicable here, denial of medical care, each of these minima has been more specifically described as encompassing two subsidiary requirements. To show an objectively serious deprivation, it is necessary to demonstrate, first, an objectively "serious medical need[ ]," *Estelle*, 429 U.S. at 104, 97 S. Ct. at 291, one that, if left unattended, "pos[es] a substantial risk of serious harm," *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 1977 (1994),[4] and second, that the response made by public officials to that need was poor enough to constitute "an unnecessary and wanton infliction of pain," and not merely accidental inadequacy, "negligen[ce] in diagnosi[s] or treat[ment]," or even "[m]edical malpractice" actionable under state law, *Estelle*, 429 U.S. at 105-06, 97 S. Ct. at 291-92 (internal quotation marks omitted).[5] Similarly, to show the required subjective intent to punish, a plaintiff must demonstrate that the public official acted with an attitude of "deliberate indifference," *Estelle*, 429 U.S. at 105, 97 S. Ct. at 291, which is in turn defined as requiring two separate things: "aware[ness] of facts from which the inference could be drawn that a substantial risk of serious harm exists[ ] and . . . draw[ing of] the inference," *Farmer*, 511 U.S. at 837,

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4. Neither side here contends that Mason did not have an objectively serious medical need. Our analysis therefore focuses on the other criteria.

5. A corollary to this requirement for a great deal more than negligence is that a public official who does act reasonably in response to a serious medical need "cannot be found liable under the Cruel and Unusual Punishments Clause," *Farmer*, 511 U.S. at 845, 114 S. Ct. at 1983, "even if the harm ultimately was not averted," *id.* at 844, 114 S. Ct. at 1983.

114 S. Ct. at 1979. Ultimately, there are thus four requirements: an objectively serious need, an objectively insufficient response to that need, subjective awareness of facts signaling the need, and an actual inference of required action from those facts.

Application to the firemedics — Taylor does not challenge the fact that at some point during their brief presence on the scene, each of the firemedics asked Mason if he needed or wanted treatment and received a negative response and that, in total, Mason was asked numerous times if he required medical attention. Instead, she seeks to focus our attention — as she focused the district court's attention — on two additional facts: first, that one of the policemen told firemedic Driskell (apparently the leader of the crew) that Mason was complaining of stomach pain, and of greater importance, that Janet Britton, a bystander who knew Mason and knew him to have a history of seizures, told the firemedics about that history and about saliva or foam around his mouth that indicated to her that he was seizing or about to seize at that very moment.

These facts do not, however, allow Taylor to show a jury punitive intent in the form of deliberate indifference. Nor do they demonstrate that a jury could find the firemedics' response objectively insufficient under *Estelle*. The firemedics did act on whatever knowledge they had of Mason's condition: they tried to check him out and administer aid. That they questioned him repeatedly regarding his desire for treatment demonstrates not deliberate indifference, but significant concern about his condition. On the summary-judgment facts, Mason simply declined treatment. And there is no indication from the summary-judgment facts that the

firemedics perceived him to do so incoherently or otherwise without the ability to speak for himself.[6]

Admittedly, as Taylor also argues, the firemedics' procedures did require taking the vital signs of seizing patients and calling in paramedics. If the firemedics drew from Britton's statements the inference that Mason was having a seizure, then they failed to act in accordance with their own protocol. But this observation, even if true, misses the point twice. First, it fails to consider that Taylor must present evidence from which a jury could find that the firemedics actually drew the inference that Mason was having a seizure: the drawing of such an inference from the observations of a layperson bystander is by no means automatic, and the other facts regarding the exchange between the firemedics and Mason himself do not indicate that they drew such an inference. Second, failure to follow procedures does not, by itself, rise to the level of deliberate indifference because doing so is at most a form of negligence.

Application to Threadgill — In Taylor's view, two aspects of Threadgill's conduct indicate deliberate indifference. First, Threadgill never examined Mason at all; she simply observed him from a distance of three feet and sent the paddy wagon to the hospital.[7] Second, according to

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6. The summary-judgment facts do indicate that Mason later responded incoherently when asked by one of the police officers for his social security number. But this took place after the firemedics departed.

7. Taylor's expert observed that it is " 'inconceivable that . . . a registered nurse . . . never touched [Mason] and . . . didn't give

(Cont'd)

the testimony of the police officer who drove the paddy wagon, Threadgill made comments indicating that she did not view it as part of her duty to help Mason, and made those comments in such a casual manner that the officer did not perceive any necessity to hurry to the hospital. Specifically, the summary-judgment facts include a quote from the officer in which Threadgill made "comments about bringing folks in that needs [sic] to go to the hospital and this and that, it's not her duty to, I guess, treat them or whatever." (R.3-120 at 5 n.8 (quoting Depo. of Officer Harvey).) Threadgill, on the other hand, contends that her comments were merely manifestations of her desire to follow written jail policy requiring incoming unconscious detainees to be "referred immediately for emergency care." (R.3-122 at 6 (quoting Br. of Plaintiff at 10).)[8]

(Cont'd)
him first aid and did not call an ambulance after realizing that Mason was unconscious.' " (R.3-122 at 7 (quoting Depo. of Dr. Pfortmiller) (omissions in original).) Taylor's expert also testified that given the cause of Mason's death, "acute pulmonary edema, with subsequent acute respiratory failure," (R.3-122 at 6), Mason's death "could have been prevented if first aid had been administered and an ambulance had been called" at the jail, (R.3-122 at 7).

8. As quoted in the summary-judgment facts, that policy was:

> Written and defined procedures requires receiving screening to be performed by health-trained or qualified health care personnel on all inmates . . . immediately upon their arrival at the jail. Persons who are unconscious, semi-conscious, bleeding, mental, unstable or otherwise urgently in need of medical attention are

(Cont'd)

Appendix A

We begin and end our analysis by asking whether Threadgill's actions — regardless of her mental state — were so objectively inadequate that they satisfy *Estelle*'s high standard. We conclude that they were not. As Taylor's expert testified, a jury might very well find that Threadgill's course of action violated professional standards applicable to her as a registered nurse. But that observation can only serve as a starting point for analysis that requires much more than negligence or malpractice. Whatever her motivation, it is clear that Threadgill did order that some medical care be provided to Mason: She sent him to the hospital. And on the summary-judgment facts, she did so in compliance with jail policy. Our task is to determine whether a jury could find this choice — made in lieu of conducting an examination at the scene and awaiting an ambulance — to be sufficiently worse than negligent.

As Taylor argues, treatment "so cursory as to amount to no treatment at all" rises to this level. *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985). So too does the delay of treatment for obviously serious conditions where "it is apparent that delay would detrimentally exacerbate the medical problem," the delay does seriously exacerbate the medical problem, and the delay is medically unjustified. *Hill v. Dekalb Reg'l Youth Detention Center*, 40 F.3d 1176, 1187,

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(Cont'd)

> referred immediately for emergency care. If they are referred to a community hospital, their admission or return to the jail is predicated upon written medical clearance.

(R.3-122 at 6 (quoting Br. of Plaintiff at 10).)

1187-89 (11th Cir. 1994). These principles were, however, developed in contexts involving much longer time frames than the incident at issue here, and with those longer time frames, greater periods for reflection upon a course of action. *See Lancaster*, 116 F.3d at 1420-23 (detailing a sequence of failures leading to death over the course of a long night of incarceration); *Hill*, 40 F.3d at 1187 n.21 (collecting and describing cases). Determining where to draw the line between the constitutional and the unconstitutional in a split-second, emergency choice between two options of the sort made here is a distinct task. Taking up this task, we conclude that Threadgill's choice was not, under emergency circumstances demanding an immediate decision, "an unnecessary and wanton infliction" of physical suffering. *Estelle*, 429 U.S. at 105, 97 S. Ct. at 292 (internal quotation marks omitted). Moreover, that Threadgill made her decision in compliance with written policies is significant: Even if that compliance was medically unreasonable (presumably, because the policies were themselves unreasonable or too undetailed to offer guidance in such a difficult situation), the existence of the policies and their dictates militates against concluding that Threadgill's actions were wanton. Thus, on the summary-judgment facts, we cannot conclude that Threadgill violated the Constitution.

Discretionary-Function Immunity on the State-Law Negligence Claims

The district court denied the firemedics discretionary-function immunity, because it thought that the immunity applies to municipal officers only if a statute so states and, as it correctly observed, there is no such statute covering

firemen. The firemedics concede that they are not covered by a statutory form of the immunity, but argue that they are protected by a common-law variety. Although the case law addressing Alabama's discretionary-function-immunity doctrine is muddled, we conclude that it does, as the firemedics contend, extend to them a common-law form of discretionary-function immunity.[9]

Confusion regarding the application of discretionary-function immunity to municipal officers in Alabama arises from significant ambiguity in the seminal case regarding

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9. Because the denial of state-law immunities presents questions regarding application of the collateral-order doctrine very similar to those raised by Taylor regarding federal qualified immunity, we question sua sponte, *see, e.g.*, *University of South Ala. v. American Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999), the propriety of our jurisdiction over the appeal as to discretionary-function immunity, *see Sheth v. Webster*, 145 F.3d 1231, 1236-38 (11th Cir. 1998). Discretionary-function immunity arising under Alabama law is, like qualified immunity arising under federal law, immunity from suit. *See Sheth*, 145 F.3d at 1237-38 (citing *Marnon v. City of Dothan*, 677 So. 2d 755, 761 (Ala. 1995); *Ex Parte City of Birmingham*, 624 So. 2d 1018, 1021 (Ala. 1993); *Phillips v. Thomas*, 555 So. 2d 81, 86 (Ala. 1989)). Therefore, the same principles of federal law governing an appeal of the denial of qualified immunity at the summary judgment stage also govern an appeal of the denial of Alabama discretionary- function immunity at the same stage. *See id.* at 1236-38. Because the firemedics appeal both the denial of discretionary-function immunity and the denial of qualified immunity from the same procedural posture and under the identical assumption regarding the validity of the district court's summary-judgment facts, we have jurisdiction to review the former just as we have jurisdiction to review the latter.

whether discretionary-function immunity applies to all "public officers" as the Restatement (Second) of Torts § 895D, a provision adopted as Alabama law, contemplates, or only to state officers arguably under the cloak of the sovereign immunity provision of the Alabama Constitution. In *Phillips v. Thomas*, 555 So. 2d 81, 83 (Ala. 1989), a case in which the defendants were state employees, the court apparently viewed discretionary-function immunity as one of two forms of immunity potentially available to state officials (the other being absolute immunity) under the Alabama Constitution of 1901, Article I, § 14. Along the way, however, it also noted that Alabama has adopted, in toto, the language of § 895D of the Restatement, *see id.* at 84 (quoting Restatement (Second) of Torts § 895D (1977)) (citing *Barnes v. Dale*, 530 So. 2d 770, 783 (Ala. 1988); *DeStafney v. University of Alabama*, 413 So. 2d 391, 393 (Ala. 1982)). A natural reading of the case (and the reading apparently underpinning the district court's opinion) might be that it holds § 895D to be the standard by which immunity *for state officers* arising under the Alabama Constitution is to be applied in an individual case. This reading also comports with the observation made in *Sheth* regarding why it was necessary for the Alabama legislature to pass a statute expressly extending discretionary-function immunity to municipal police officers. *See Sheth*, 145 F.3d at 1236 (observing, in dicta, that Ala. Code § 6-5-338, which grants discretionary-function immunity to "peace officer[s] . . . employed . . . by . . . a county or municipality" but not to other municipal officers, was enacted in apparent recognition of the fact that "certain state police officers are entitled to absolute immunity as constitutional officers and that other state police officers are entitled to discretionary function

immunity, but that county and municipal police officers arguably had no immunity").

Nevertheless, in light of subsequent decisions by Alabama courts, we must conclude that this reading is wrong. At least four times, Alabama appeals courts have held § 895D immunity applicable to municipal officers. *See Roden v. Wright*, 646 So. 2d 605, 609-11 (Ala. 1994) (holding that plaintiff suing a county commissioner was collaterally estopped from denying the commissioner's § 895D immunity because all of the issues necessary to resolving that immunity were already litigated in a federal suit involving an issue of qualified immunity); *Ex parte City of Birmingham*, 624 So. 2d 1018, 1021 (Ala. 1993) (applying the immunity to various city officials); *Crowe v. City of Athens*, 733 So. 2d 447, 449, 451 (Ala. Civ. App. 1999) (applying the immunity to a city officer and observing that "[n]either party has provided authority, and we are aware of none, for the proposition that the operation of § 895D as an affirmative defense with respect to state officials differs from its operation as to municipal officials"); *Marnon v. City of Dothan*, 677 So. 2d 755, 761 (Ala. Civ. App. 1995) (applying the immunity to city commissioners). *See also Crouch v. Whatley*, 900 F. Supp. 1567, 1571-73 (M.D. Ala. 1995) (treating § 6-5-338 and common-law § 895D immunities as independent doctrines, both available to a municipal police officer); *Williams v. Crook*, 741 So. 2d 1074, 1076-78 (Ala. 1999) (denying a municipal police officer immunity under § 6-5-338, but also recognizing in dicta that "public officials, including municipal employees" have access to the immunity recognized in *Phillips*). Alabama's discretionary-function immunity doctrine thus applies to the municipal firemen in

this case, and we must consider whether they have, on the summary-judgment facts, satisfied its requirements.

The firemedics are entitled to discretionary-function immunity if, on the summary-judgment facts, their acts at the scene were discretionary and Taylor has not presented evidence sufficient to create a jury question regarding whether they "acted in bad faith, [or] with malice or willfulness." *Sheth*, 145 F.3d at 1239 (citing *Wright v. Wynn*, 682 So. 2d 1, 2 (Ala. 1996)). For the same reason we found the firemedics entitled to qualified immunity from the federal claims against them, we also conclude that Taylor could not show a jury that they acted with the mental state necessary to preclude discretionary-function immunity. Thus, we have only to ask whether their acts were discretionary where discretionary acts are defined as " 'those . . . as to which there is no hard and fast rule as to the course of conduct that one must or must not take and those acts requiring exercise in judgment and choice and involving what is just and proper under the circumstances .' " *Id.* (quoting *Wright*, 682 So. 2d at 2). As we noted in our qualified-immunity analysis, the summary-judgment facts indicate that department procedure for a seizing patient required taking vital signs and calling for paramedics. But in the face of Mason's having repeatedly refused treatment, no reasonable jury could conclude that the procedure provided a "hard and fast rule" for handling the situation; this was clearly an instance in which the firemedics had to exercise "judgment and choice," and they are therefore entitled to discretionary-function immunity.[10]

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10. Because the firemedics are entitled to discretionary-function immunity, we need not decide whether the district court (Cont'd)

Appendix A

Conclusion

For the foregoing reasons, we reverse the district court's denial of qualified immunity and discretionary-function immunity to the firemedics and denial of qualified immunity to Threadgill.[11]

REVERSED and REMANDED.[12]

(Cont'd)
erred when it decided that the firemen, because they were on duty, were not entitled to the "Good Samaritan" immunity conferred by Ala. Code § 6-5-339 (Michie 1993), or whether we even have jurisdiction to consider the question.

11. Appellant's motion for certification of unresolved state-law questions is DENIED.

12. The City of Mobile remains a defendant in this case but is not a party to this appeal.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION DATED AND FILED FEBRUARY 26, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

CIVIL ACTION NO. 97-0778-CB-M

VIOLA TAYLOR, as Administratrix of the Estate of JIMMIE LEE MASON, JR., deceased,

Plaintiff,

v.

CITY OF MOBILE, et al.,

Defendants.

ORDER

Several motions for summary judgment have been filed by various defendants or groups of defendants in this case. This order addresses the motion filed by defendants Crystal Threadgill and the Sheriff of Mobile County.[1] Because the Court has previously held that plaintiff's state law claims against these defendants are time barred, only issues relevant

1. Plaintiff's Amended Complaint refers only to "the Sheriff of Mobile County" and does not name the sheriff by name. Jack Tillman is the Sheriff of Mobile County.

to plaintiff's § 1983 claims against will have been considered. For the reasons set forth below, the Court finds that the Sheriff is entitled to summary judgment but that Threadgill is not.

I. Findings of Fact

On August 23,1995, plaintiff's decedent, Jimmie Mason, was chased from the K & B Drugstore on Government Street in Mobile, Alabama, by store employees who believed Mason had been shoplifting. The employees apprehended Mason a few blocks away and held him until police arrived. Firemedics were also called to the scene.[2] Officer Richard Chambless of the Mobile Police Department was the first policeman to arrive. He went over to where the employees were holding Mason on the ground, handcuffed Mason and helped him to his feet. Officer Lawrence Harvey and Officer Douglas Parmenter arrived on the scene. Officer Parmenter helped Chambless assist Mason up from the ground. Consistent with what had just transpired — a foot chase on a hot August day — Mason and both of the store employees were sweating and breathing heavily. After helping Mason up, Parmenter interviewed the store employees.

A fire engine company arrived on the scene at about the same time. Three of the firefighters — James Connick,

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2. The firemedics were summoned when a bystander, who knew of Mason's medical history, told her daughter to call 911. The transcript of the 911 call reveals a misunderstanding about the nature of the problem — the operator understood that one of the store employees was in need of medical assistance. The firemedics were under the impression that someone had been shot.

Appendix B

Captain Julian Driskell and Lonnie Adams — were firemedics.[3] According to the defendants, Connick and Driskell got off the truck first and went over to Mason. Connick put his hand on Mason's arm and asked him if he was okay. Mason replied that he was okay. Mason had twice complained to Chambless that his stomach hurt. Chambless told Mason to let the firemedics check him out and told Captain Driskell that Mason had been complaining that his stomach hurt.[4] In response this information, Driskell asked Mason if he was okay and if he wanted to be checked out. Mason responded that he was okay and that he did not want to be checked out. According to Driskell, Mason was asked several times if he was okay and if he wanted to be checked out and, each time, replied that he was okay and did not want to be checked out.

Janet Britton, one of the bystanders at the scene was a friend of Mason's family and knew that Mason suffered from seizures. In her affidavit, Mrs. Britton states while Mason was on the ground she noticed that he that had saliva or foam around his mouth and that as soon as Mason stood up from the ground she recognized he was either coming out of or about to go into a seizure. According to Mrs. Britton, she "informed both the policemen and the firemedics of his medical condition, and informed them that they needed to

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3. Firemedics are not paramedics but are firefighters who have been trained as emergency medical technicians in basic first aid.

4. Chambless said he told one of the firemedics about Mason's complaint, and Driskell testified in his affidavit that someone told him Mason was complaining of stomach pains. Thus, the Court presumes Chambless spoke to Driskell.

get him to the doctor or a hospital as soon as possible."[5] [6] For the firemedics, the procedure for dealing with a person having a seizure would have been to take his vital signs and call for a paramedic truck.

Upon Mason's refusal of treatment, Connick and Driskell started back toward the truck as the third firemedic, Lonnie Adams, walked up. Connick and Driskell told Adams that Mason had refused treatment. However, noticing that Mason was sweating and breathing hard, Adams looked at Mason and asked, "[A]re you sure you don't want us to check you out and be sure you're all right?" Adams depo. pp. 25-26. Mason indicated that he did not want to be checked out. *Id.* The engine company then left after less than five minutes on the scene. Officer Harvey had walked away to his van as the firemedics began talking to Mason. As he returned, the firemedics were finishing up. Officer Harvey heard them say that Mason was "okay to go" and that he was just exhausted from running, or words to that effect. Harvey was not close by when the firemedics were talking to Mason but, from his observations, believed that they had examined him.

Harvey escorted Mason to the paddy wagon, and Mason got inside, still breathing heavily. Harvey had earlier

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5. This fact is disputed. None of the defendants admit having any knowledge that Mason suffered from seizures.

6. Viewing this evidence in the light most favorable to plaintiff, the Court assumes that when Mrs. Britton says she told the policemen and the firemen she is referring to all the policemen and firemedics on the scene and that when Mrs. Britton says she told them "of his medical condition" that she is referring to her earlier observation that Mason was either going into or coming out of a seizure.

overheard Mason give some personal information to Chambless in response to questioning but asked him some additional questions after Mason got in the paddy wagon. According to Harvey, Mason was answering most of his questions, generally by nodding his head. However, when asked for his social security number, Mason replied with a string of numbers that made no sense. Harvey believed there could have been a number of reasons for Mason's unresponsive answer, such as simply now knowing his social security number, having a mental illness or being mentally impaired.[7]

Mrs. Britton saw Mason while he was sitting in the back of the paddy wagon, According to her affidavit, Mason's "response was incoherent, and he was unable to respond."[8] Britton Aff. p. 2. Mrs. Britton observed that Mason still had a dazed expression and "repeated to the police officer that Jimmy suffers from seizures[ ] and should be taken to the hospital immediately." *Id.*

Harvey transported Mason from the scene in the paddy wagon. When Harvey pulled up in the sally port area of Metro

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7. Harvey had been told by a bystander that Mason, who lived in the neighborhood, was a mental patient who was on medication for his condition. Harvey mentioned this information to another police officer but does not recall giving it to any of the firemedics.

8. The Court finds Mrs. Britton's affidavit is not inconsistent with Officer Harvey's testimony on this point. Mrs. Britton gives no specifies and states simply that the officers were attempting to question Mason and that Mason's "response" was incoherent. This is entirely consistent with Harvey's testimony that Mason's response regarding his social security number was, essentially, incoherent.

Jail about eleven minutes later, he opened up the back of the van to find Mason lying down and unresponsive. When Harvey could not rouse Mason by shaking his leg, he summoned help from some correctional officers standing nearby. Harvey and Sergeant Turner got inside the van and rubbed Mason's chest. When they heard what sounded like a snore, they believed Mason was asleep. Sergeant Turner then decided to try splashing water on Mason's face. When that did not work, he sent one of the other officers to summon the nurse.

Sergeant Turner met Crystal Threadgill, a registered nurse employed at the jail, inside the jail doors just before she walked out to the sally port. Turner explained to her that the prisoner was "out" and did not respond when they put water on him. According to Threadgill, when they got outside she asked Officer Harvey what had happened and Harvey just said something like "I don't know[.] [He] was okay, you know." Threadgill depo. p. 37. However, Harvey gave no detailed information. Nurse Threadgill walked out to the back of the van and looked inside. She stood approximately three feet from Mason with her hands behind her back. She looked at him and, without examining him, told Harvey to take him to USA Medical Center, She then turned and walked by inside the jail.[9] Based on Threadgill's apparent lack of concern, Harvey transported Mason to the hospital as a non-emergency, without lights or sirens. Mason died en route to USA Medical Center.

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9. According to Officer Harvey, Nurse Threadgill walked away "making comments about bringing folks in that needs [sic] to go to the hospital and this and that, it's not her duty to, I guess, treat them or whatever." Harvey depo. p. 51.

Appendix B

Threadgill testified in her deposition that she was following the policy of the Metro Jail, which was approved and adopted by the Sheriff, when she sent Mason to the hospital. That policy allegedly states:

> Written and defined procedures require receiving screening to be performed by health-trained or qualified health care personnel on all inmates . . . immediately upon their arrival at the jail. Persons who are unconscious, semi-conscious, bleeding, mental, unstable or otherwise urgently in need of medical attention are referred immediately for emergency care. If they are referred to a community hospital, their admission or return to the jail is predicated upon written medical clearance.

Pl.'s Brf. p. 10.[10]

According to plaintiff's expert, Dr. Pfortmiller, Mason died of acute pulmonary edema, with subsequent acute respiratory failure. It is Dr. Pfortmiller's opinion that Mason's attempt to flee led to an acceleration in blood pressure which probably caused him to go into congestive heart failure and that the congestive heart failure was exacerbated by his being held in a supine position on the ground after being apprehended by the K & B employees. Because the condition was unrecognized and untreated,

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10. Plaintiff has not submitted a copy of this policy as part of her evidentiary submissions in opposition to summary judgment. Defendants have not, however, challenged plaintiff's assertion that such a policy exists.

Mason's lungs filled with fluid, leading to acute pulmonary edema, respiratory arrest and, eventually, cardiac arrest. Dr. Pfortmiller believes that, more likely than not, an evaluation at the scene of the arrest would have shown Mason's vital signs to be unstable which would have alerted the firemedics to summon an ambulance to transport Mason to the hospital. Further, Dr. Pfortmiller has stated that Mason was in imminent danger of cardiac arrest when he arrived at that jail and that his death could have been prevented if first aid had been administered and an ambulance had been called. In Dr. Pfortmiller's opinion it is "inconceiveable that . . . a registered nurse . . . never touched [Mason] and . . . didn't give him first aid" and did not call an ambulance after realizing that Mason was unconscious." Ex. to Pfortmiller Depo.

II. Conclusions of Law[11]

A. *Issues Presented*

Plaintiff asserts a federal law claim against both Threadgill and the Sheriff under 42 U.S.C. § 1983 for violation of Jimmie Mason's Eighth and Fourteenth Amendment rights. The Court has original jurisdiction over the federal law claim pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiff contends that Threadgill violated Mason's constitutional rights because she acted with deliberate indifference to his serious medical needs when she failed to examine or to render medical assistance to Mason at the Metro Jail. Threadgill argues that she is entitled to summary

11. The principles which guide the Court's summary judgment analysis have been adequately set forth in previous orders entered in this case and need not be repeated here.

judgment because her actions did not amount to deliberate indifference and because she is protected by the doctrine of qualified immunity.

Plaintiff asserts that the Sheriff is liable because he adopted a policy which, as applied, violated Mason's constitutional rights. Alternatively, plaintiff argues that the Sheriff is liable because he failed to train jail staff to enable them to make decisions regarding the medical needs of inmates and that this failure to train amounted to a custom or policy which was the moving force behind the deprivation of Mason's constitutional rights. In his motion for summary judgment, the Sheriff contends that he cannot be held liable, first, he did not participate in the acts giving rise to the constitutional deprivation and there is no respondent superior liability under § 1983. Second, he argues that he cannot be held liable for a custom or policy of inadequate training because no underlying constitutional deprivation resulted.

The Court must determine whether plaintiff has presented evidence to support her claim for deliberate indifference against Nurse Threadgill and whether Threadgill is entitled to qualified immunity. Because the Sheriff's argument in support of summary judgment is predicated in part upon Threadgill's success on the deliberate indifference claim, the Court will first address whether plaintiff has produced evidence to support her underlying constitutional claim. The Court will next address Threadgill's qualified immunity claim. Finally, the Court will consider the Sheriff's contention that he cannot be held liable because he did not personally participate in the acts giving rise to the constitutional deprivation.

Appendix B

A. *Fourteenth Amendment & Deliberate Indifference*

"Claims involving the mistreatment of arrestees or pretrial detainees in custody are governed by the Fourteenth Amendment's Due Process clause instead of the Eighth Amendment's Cruel and Unusual Punishment clause, which applies to such claims by convicted prisoners. . . . However the applicable standard is the same, so decisional law involving prison inmates applies equally to cases involving arrestees or pretrial detainees." *Cottrell v. Caldwell*, 85 F.3d 1481, 1490 (11th Cir. 1996). In order to prove a constitutional violation based on inadequate medical treatment, plaintiff must prove that the defendant was deliberately indifferent to Jimmie Mason's serious medical need. *See Popham v. City of Talladega*, 908 F.2d 1561, 1563 (11th Cir. 1990) (deliberate indifference standard applies to both pretrial detainees and convicted prisoners); *Anderson v. City of Atlanta*, 778 F.2d 678, 686-87 (11th Cir. 1985) (same). A serious medical need "is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for [medical] attention." *Hill v. Dekalb Regional Youth Detention Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994).

Proof of deliberate indifference requires more than proof of mere negligence. *Hill v. DeKalb Regional Youth Detention Ctr.*, 40 F.3d 1176, 1186 (11th Cir. 1994). Rather, plaintiff must prove both objective and subjective components to satisfy deliberate indifference. *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294 (1991)). "The objective component . . . 'is contextual and responsive to contemporary standards of decency.' " *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1,

(1992)) (some internal quotations omitted). The subjective component requires knowledge of the serious medical need and intentional refusal to provide treatment. *Id.*

Threadgill argues that the evidence does not objectively or subjectively support a claim of deliberate indifference against her. She contends that the decision not to examine Mason could not objectively be considered deliberate indifference because she sent him to a hospital where he could received treatment. Perhaps this argument might be more compelling in less critical circumstances, but here Mason was unconscious, and Threadgill made no attempt to ascertain what was wrong with him before she sent him to the hospital. Had she done so, she probably would have recognized that Mason was going into respiratory arrest and that he needed immediate treatment.[12]

Threadgill contends that she did not have subjective knowledge of Mason's condition because she did not know the reason he was unconscious. Threadgill's argument practically proves plaintiff's case. She knew Mason was unconscious but failed to assess him to determine whether he needed immediate attention. Certainly, a trier of fact could conclude that Mason's unconscious state was a serious medical need and that by failing to evaluate him at the jail Nurse Threadgill either denied or delayed medical treatment.

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12. At the least, there is an issue of fact as to what Threadgill would have discovered had she taken Mason's vital signs. Threadgill testified at deposition that taking vital signs would have only told her than Mason's heart was beating and that he was breathing. Dr. Pfortmiller disputes this testimony. According to Dr. Pfortmiller, Threadgill should have recognized that Mason was going into cardiac arrest if she had taken his vital signs.

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B. *Qualified Immunity*

The law with respect to qualified immunity is now well settled in this Circuit. In *Lassiter v. Alabama A & M University*, 28 F.3d 1146 (11th Cir. 1994) (en banc), the appellate court stated:

> Qualified immunity protects government officials performing discretionary functions from civil trial (and other burdens of litigation, including discovery) and from liability if their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 114 L.Ed.2d 277 (1991) . . .
>
> That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made against them in their *individual capacities*. Unless a government agent's act is so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit. . . . Because qualified immunity shields government actors in all but exceptional cases, courts should think long and hard before stripping defendants of immunity.

Id. at 1149 (citations and footnote omitted).

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The qualified immunity determination involves a two-step process. First, the defendant must prove that he was acting within the scope of his discretionary authority when the alleged wrongful conduct occurred. *Jordan v. Doe*, 38 F.3d 1559, 1565 (11th Cir. 1994). A defendant may discharge this burden by establishing that the actions were undertaken in performance of his duties and were within the scope of his authority. *Id.* There is no dispute in this case that the defendant was acting within the scope of her authority.

Next, the burden shifts to the plaintiff to demonstrate that the defendant violated clearly established law. *Id.* In order to be clearly established, "the law must have earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place that 'what he is doing' violates federal law." *Lassiter*, 28 F.3d at 1149 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The plaintiff may not discharge her burden "by referring to general rules and to the violation of abstract 'rights'." *Id.* at 1150. "For qualified immunity to be surrendered, pre-existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what the defendant is doing violates the law *in the circumstances*." *Id.*

At the time of this incident, Eleventh Circuit case law held that "[m]edical treatment that is 'so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to fundamental fairness' constitutes deliberate indifference." *Adams v. Poag*, 61 F.3d 1537, 1544 (11th Cir. 1995) (quoting *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th

Cir. 1986)).[13] Furthermore, " 'a [ ] decision to take an easier and less efficacious course of treatment also constitutes deliberate indifference.' " *Id.* (quoting *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989). An official may also be deliberately indifferent if the need for medical care is obvious and treatment is so cursory as to amount to no medical care at all. *Id.* (citing *Anacata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985)).

Threadgill argues that she is entitled to qualified immunity because there is no case law addressing the precise situation she faced. However, it is not necessary that the case law be defined with the amount of specificity plaintiff would require. *See Lancaster*, 116 F.3d at 1426 n.7; *see also Hill v. Dekalb County Regional Youth Detention Ctr.*, 40 F.3d 1176, 1186 (11th Cir. 1994) (finding of deliberate indifference necessarily precludes a finding of qualified immunity). While the preexisting case law does not, and cannot, address every situation, it does make clear that an official cannot ignore the serious medical needs of a pretrial detainee, even under the guise of providing treatment. Threadgill's failure to do more than glance at an unconscious prisoner prior to sending him to the hospital in the back of a police van can be viewed as a decision to take an easier and less efficacious course of treatment (*i.e.*, let the hospital deal with it) or as medical care that was so cursory as to amount to no care at all. Consequently, she is not entitled to qualified immunity.

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13. Although *Adams* was decided a few days after the incident giving rise to the instant action, its discussion regarding conduct that amounts to deliberate indifference is based on preexisting case law. *Id.* at 1543-44.

Appendix B

C. *Sheriff of Mobile County*

Plaintiff sets forth essentially two claims against the Sheriff in his capacity as a policymaker for the Metro Jail. First, she contends that the Sheriff is liable for adopting an unconstitutional policy with respect to the jail's acceptance of persons who are sick or injured. This argument is meritless. The jail's policy is not unconstitutional on its face. The policy does not deny medical care to arrestees but, instead, directs that they be referred for medical care.[14]

Second, she contends that the Sheriff is liable as a supervisor because he failed to adequately train and supervise his jail staff with respect to the medical needs of inmates.[15] To prove this claim, plaintiff must establish that (1) training and supervision was inadequate (2) this failure to train or supervise amounts to a policy of the Sheriff and (3) that this policy caused Nurse Threadgill to violate a Mason's constitutional rights. *See Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998) (setting forth elements of a

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14. This policy is similar to the policy at issue in *City of Canton v. Harris*, 489 U.S. 378 (1989), which the Supreme Court found was not unconstitutional. There the policy provided that the city jailer " 'shall have [a person needing medical care] taken to a hospital for medical treatment with permission of his supervisor . . .' " *Id.* at 386.

15. Although plaintiff divides her claim into two separate causes of action — failure to train and custom or practice of deliberate indifference — failure to train is only actionable if it amounts to deliberate indifference, and deliberate indifference is proven by demonstrating that the failure to train amounts to a custom or policy. *Canton*, 489 U.S. at 388-89.

§ 1983 failure-to-train cause of action). The Sheriff's only challenge to plaintiff's failure-to-train cause of action relates to the third element of her claim. The Sheriff contends that there is no causal connection because Threadgill did not violate Mason's constitutional rights. Since there is a genuine issue of material fact as to whether Threadgill's action amounted to deliberate indifference to Mason's serious medical needs. *See* discussion *supra* pp. 8-10. Therefore, the Sheriff is not entitled to summary judgment of the issue raised.[16]

D. *Conclusion*

Plaintiff has presented evidence from which a reasonable factfinder could conclude that defendant Threadgill was

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16. The joint brief on summary judgment filed by Threadgill and the Sheriff briefed the issue of qualified immunity from suit under § 1983 as to Threadgill but not as to the Sheriff. The brief discusses the Sheriff's Eleventh Amendment and discretionary function immunity with respect to the state law claim, although it confusingly invokes federal case law on qualified immunity. (A state law negligence claim, which the Court subsequently found to be time barred, was pending against these defendants at the time the briefs were filed.) Understandably, plaintiff did not address qualified immunity as it related to the Sheriff's § 1983 liability. Under the circumstances, the Court finds that the Sheriff has not clearly invoked qualified immunity as a basis for his motion for summary judgment as to plaintiff's § 1983 claim against him. This does not preclude the Sheriff from raising the qualified immunity issue, however. *Riley v. Camp*, 130 F.3d 958, 968 (11th Cir. 1997) (en banc) (qualified immunity may be raised at any stage of the proceedings). Moreover, the Court will consider a supplemental motion for summary judgment on this issue if one is filed.

deliberately indifferent to Mason's serious medical needs. Furthermore, under the facts presented by plaintiff, a reasonable person in Threadgill's situation would have understood that her actions violated Mason's constitutional rights. Therefore, Threadgill is not entitled to summary judgment as to either the deliberate indifference or the qualified immunity issue. Because the Sheriff's summary judgment claim was dependent upon the success of Threadgill's argument that her actions did not amount to deliberate indifference, his motion also fails. Accordingly, the motion for summary judgment filed by the Sheriff of Mobile County and Crystal Threadgill is hereby **DENIED**.

It is so **ORDERED**.

DONE this the 26th day of February, 1999.

s/ [illegible]
CHIEF DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION DATED AND FILED FEBRUARY 23, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

CIVIL ACTION NO. 97-0778-CB-M

VIOLA TAYLOR, as Administratrix of the Estate of JIMMIE LEE MASON, JR., deceased,

Plaintiff,

v.

CITY OF MOBILE, et al.,

Defendants.

ORDER

Several motions for summary judgment have been filed by various defendants or groups of defendants in this case. This order addresses the motions filed by Mobile police officers Richard Chambless, Lawrence Harvey, Douglas Parmenter and William Mason (Doc. 77) and by Mobile firefighters James Connick, Julian Driskell and Lonnie Adams (Doc. 74). For the reasons set forth below, the Court finds that Chambless, Harvey, Parmenter and Mason are entitled to summary judgment as to all claims against them but that Connick, Driskell and Adams are not.

Appendix C

I. Findings of Fact

On August 23, 1995, plaintiff's decedent Jimmie Mason, was chased from the K & B Drugstore on Government Street in Mobile, Alabama, by store employees who believed Mason had been shoplifting. The employees apprehended Mason a few blocks away and held him until police arrived. Firemedics were also called to the scene.[1] Officer Richard Chambless of the Mobile Police Department was the first policeman to arrive. He went over to where the employees were holding Mason on the ground, handcuffed Mason and helped him to his feet. Officer Lawrence Harvey and Officer Douglas Parmenter arrived on the scene. Officer Parmenter helped Chambless assist Mason up from the ground. Consistent with what had just transpired — a foot chase on a hot August day — Mason and both of the store employees were sweating and breathing heavily. After helping Mason up, Parmenter interviewed the store employees.

A fire engine company arrived on the scene at about the same time. Three of the firefighters — James Connick, Captain Julian Driskell and Lonnie Adams — were firemedics.[2] According to the defendants, Connick and

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1. The firemedics were summoned when a bystander, who know of Mason's medical history, told her daughter to call 911. The transcript of the 911 call reveals a misunderstanding about the nature of the problem — the operator understood that one of the store employees was in need of medical assistance. The firemedics were under the impression that someone had been shot.

2. Firemedics are not paramedics but are firefighters who have been trained as emergency medical technicians in basic first aid.

Driskell got off the truck first and went over to Mason. Connick put his hand on Mason's arm and asked him if he was okay. Mason replied that he was okay. Mason had twice complained to Chambless that his stomach hurt. Chambless told Mason to let the firemedics check him out and told Captain Driskell that Mason had been complaining that his stomach hurt.[3] In response this information, Driskell asked Mason if he was okay and if he wanted to be checked out. Mason responded that he was okay and that he did not want to be checked out. According to Driskell, Mason was asked several times if he was okay and if he wanted to be checked out and, each time, replied that he was okay and did not want to be checked out.

Janet Britton, one of the bystanders at the scene was a friend of Mason's family and knew that Mason suffered from seizures. In her affidavit, Mrs. Britton states while Mason was on the ground she noticed that he that had saliva or foam around his mouth and that as soon as Mason stood up from the ground she recognized he was either coming out of or about to go into a seizure. According to Mrs. Britton, she "informed both the policemen and the firemedics of his medical condition, and informed them that they needed to get him to the doctor or a hospital as soon as possible."[4] [5]

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3. Chambless said he told one of the firemedics about Mason's complaint, and Driskell testified in his affidavit that someone told him Mason was complaining of stomach pains. Thus, the Court presumes Chambless spoke to Driskell.

4. This fact is disputed. None of the defendants admit having any knowledge that Mason suffered from seizures.

(Cont'd)

Appendix C

For the firemedics, the procedure for dealing with a person having a seizure would have been to take his vital signs and call for a paramedic truck.

Upon Mason's refusal of treatment, Connick and Driskell started back toward the truck as the third firemedic, Lonnie Adams, walked up. Connick and Driskell told Adams that Mason had refused treatment. However, noticing that Mason was sweating and breathing hard, Adams looked at Mason and asked, "[A]re you sure you don't want us to check you out and be sure you're all right?" Adams depo. pp. 25-26. Mason indicated that he did not want to be checked out. *Id.* The engine company then left after less than five minutes on the scene. Officer Harvey had walked away to his van as the firemedics began talking to Mason. As he returned, the firemedics were finishing up. Officer Harvey heard them say that Mason was "okay to go" and that he was just exhausted from running, or words to that effect. Harvey was not close by when the firemedics were talking to Mason but, from his observations, believed that they had examined him.

Harvey escorted Mason to the paddy wagon, and Mason got inside, still breathing heavily. Harvey had earlier overheard Mason give some personal information to Chambless in response to questioning but asked him some

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(Cont'd)

5. Viewing this evidence in the light most favorable to plaintiff, the Court assumes that when Mrs. Britton says she told the policemen and the firemen she is referring to all the policemen and firemedics on the scene and that when Mrs. Britton says she told them "of his medical condition" that she is referring to her earlier observation that Mason was either going into or coming out of a seizure.

additional questions after Mason got in the paddy wagon. According to Harvey, Mason was answering most of his questions, generally by nodding his head. However, when asked for his social security number, Mason replied with a string of numbers that made no sense. Harvey believed there could have been a number of reasons for Mason's unresponsive answer, such as simply now knowing his social security number, having a mental illness or being mentally impaired.[6]

Mrs. Britton saw Mason while he was sitting in the back of the paddy wagon. According to her affidavit, Mason's "response was incoherent, and he was unable to respond."[7] Britton Aff. p. 2. Mrs. Britton observed that Mason still had a dazed expression and "repeated to the police officer that Jimmy suffers from seizures[ ] and should be taken to the hospital immediately." *Id.*

Harvey transported Mason from the scene in the paddy wagon. When Harvey pulled up in the sally port area of Metro Jail about eleven minutes later, he opened up the back of the

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6. Harvey had been told by a bystander that Mason, who lived in the neighborhood, was a mental patient who was on medication for his condition. Harvey mentioned this information to another police officer but does not recall giving it to any of the firemedics.

7. The Court finds Mrs. Britton's affidavit is not inconsistent with Officer Harvey's testimony on this point. Mrs. Britton gives no specifics and states simply that the officers were attempting to question Mason and that Mason's "response" was incoherent. This is entirely consistent with Harvey's testimony that Mason's response regarding his social security number was, essentially, incoherent.

van to find Mason lying down and unresponsive. When Harvey could not rouse Mason by shaking his leg, he summoned help from some correctional officers standing nearby. Harvey and Sergeant Turner got inside the van and rubbed Mason's chest. When they heard what sounded like a snore, they believed Mason was asleep. Sergeant Turner then decided to try splashing water on Mason's face. When that did not work, he sent one of the other officers to summon the nurse.

Sergeant Turner met Crystal Threadgill, a nurse employed at the jail, inside the jail doors just before she walked out to the sally port. Turner explained to her that the prisoner was "out" and did not respond when they put water on him. According to Threadgill, when they got outside she asked Officer Harvey what had happened and Harvey just said something like "I don't know[.] [He] was okay, you know." Threadgill depo. p. 37. However, Harvey gave no detailed information. Nurse Threadgill walked out to the back of the van and looked inside. She stood approximately three feet from Mason with her hands behind her back. She looked at him and, without examining him, told Harvey to take him to USA Medical Center. She then turned and walked by inside the jail.[8] Based on Threadgill's lack of concern, Harvey transported Mason to the hospital as a non-emergency, without lights or sirens. Mason died en route to USA Medical Center.

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8. According to Officer Harvey, Nurse Threadgill walked away "making comments about bringing folks in that needs [sic] to go to the hospital and this and that, it's not her duty to, I guess, treat them or whatever." Harvey depo. p. 51.

Appendix C

According to plaintiffs expert, Dr. Pfortmiller, Mason died of acute pulmonary edema, with subsequent acute respiratory failure. It is Dr. Pfortmiller's opinion that Mason's attempt to flee led to an acceleration in blood pressure which probably caused him to go into congestive heart failure and that the congestive heart failure was exacerbated by his being held in a supine position on the ground after being apprehended by the K & B employees. Because the condition was unrecognized and untreated, Mason's lungs filled with fluid, leading to acute pulmonary edema, respiratory arrest and, eventually, cardiac arrest. Dr. Pfortmiller believes that, more likely than not, an evaluation at the scene of the arrest would have shown Mason's vital signs to be unstable which would have alerted the firemedics to summon an ambulance to transport Mason to the hospital. Further, Dr. Pfortmiller has stated that Mason was in imminent danger of cardiac arrest when he arrived at that jail and that his death could have been prevented if first aid had been administered and an ambulance had been called.

II. Conclusions of Law

Plaintiff asserts a federal law claim against all defendants under 42 U.S.C. § 1983 for violation of Jimmy Mason's Eighth and Fourteenth Amendment Rights. In addition, plaintiff has set forth a claim under Alabama's Wrongful Death Act against each of these defendants. The Court has original jurisdiction over the federal law claim pursuant to 28 U.S.C. §§ 1331 and 1343 and has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

Appendix C

A. Summary Judgment Analysis

Summary judgment should be granted only if "there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears "the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Once the moving party has satisfied his responsibility, the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact. *Id.* "If the nonmoving party fails to make 'a sufficient showing on an essential element of her case with respect to which she has the burden of proof,' the moving party is entitled to summary judgment." *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)) (footnote omitted). "In reviewing whether the nonmoving party has met its burden, the court stop short of weighing the evidence and making credibility determinations of the truth of the matter. Instead, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tipton v. Bergrohr GMBH-Siegen*, 965 F.2d 994, 999 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 1259 (1993) (internal citations and quotations omitted).

B. Section 1983

Each of these individual defendants contends that he is entitled to summary judgment as to the substance of plaintiff's § 1983 claims. In other words, each argues that plaintiff cannot meet her burden of proving the elements of her claims.

Appendix C

Further, each of the individual defendants argues that he is entitled to qualified immunity from suit because the constitutional right the defendants are alleged to have violated was not clearly established under the laws of this circuit at the time of the incident. In the context of this case, qualified immunity and deliberate indifference become intertwined because the constitutional right defendants allegedly violated was clearly established.

1. Fourteenth Amendment & Deliberate Indifference

"Claims involving the mistreatment of arrestees or pretrial detainees in custody are governed by the Fourteenth Amendment's Due Process clause instead of the Eighth Amendment's Cruel and Unusual Punishment clause, which applies to such claims by convicted prisoners. . . . However the applicable standard is the same, so decisional law involving prison inmates applies equally to cases involving arrestees or pretrial detainees." *Cottrell v. Caldwell*, 85 F.3d 1481, 1490 (11th Cir. 1996). In order to prove a constitutional violation based on inadequate medical treatment, plaintiff must prove that the defendants were deliberately indifferent to Jimmy Mason's serious medical need. *See Popham v. City of Talladega*, 908 F.2d 1561, 1563 (11th Cir. 1990) (deliberate indifference standard applies to both pretrial detainees and convicted prisoners); *Anderson v. City of Atlanta*, 778 F.2d 678, 686-87 (11th Cir. 1985) (same).

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satisfy deliberate indifference. *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294 (1991)). "The objective component . . . 'is contextual and responsive to contemporary standards of decency.' " *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, (1992)) (some internal quotations omitted). The subjective component requires knowledge of the serious medical need and intentional refusal to provide treatment. *Id.*

2. Qualified Immunity

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> Qualified immunity protects government officials performing discretionary functions from civil trial (and other burdens of litigation, including discovery) and from liability if their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 114 L.Ed.2d 277 (1991) . . .
>
> That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made against them in their *individual capacities*. Unless a government agent's act is so obviously wrong, in the light of pre-existing law,

> that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit. . . . Because qualified immunity shields government actors in all but exceptional cases, courts should think long and hard before stripping defendants of immunity.

Id. at 1149 (citations and footnote omitted).

The qualified immunity determination involves a two-step process. First, the defendant must prove that he was acting within the scope of his discretionary authority when the alleged wrongful conduct occurred. *Jordan v. Doe*, 38 F.3d 1559, 1565 (11th Cir. 1994). A defendant may discharge this burden by establishing that the actions were undertaken in performance of his duties and were within the scope of his authority. *Id.* There is no dispute in this case that the defendant was acting within the scope of his authority.

Next, the burden shifts to the plaintiff to demonstrate that the defendant violated clearly established law. *Id.* In order to be clearly established, "the law must have earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place that 'what he is doing' violates federal law." *Lassiter*, 28 F.3d at 1149 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The plaintiff may not discharge his burden "by referring to general rates and to the violation of abstract 'rights'." *Id.* at 1150. "For qualified immunity to be surrendered, pre-existing law must dictate, that is, truly compel (not just

suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what the defendant is doing violates the law *in the circumstances*." *Id.*

To determine precisely what law was clearly established at the time of this incident, the Court need look no further than the Eleventh Circuit's opinion in *Lancaster v. Monroe County*, 116 F.3d 1419 (11th Cir. 1997). Although *Lancaster* was decided after the incident giving rise to this action, it contains a thorough discussion of relevant case law in existence at that time:

> [O]n March 6, 1995, . . . the case law had made it clear that an official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate. . . . The case law had also clearly established . . . that an official acts with deliberate indifference when he intentionally delays providing an inmate with access to medical treatment, knowing that the inmate has a life-threatening condition or an urgent medical condition that would be exacerbated by delay.

Id. at 1425. Thus, if there is an issue of fact as to whether a defendant knew that plaintiff's decedent had an urgent medical condition and failed to seek treatment, then he is not entitled to summary judgment as to either his qualified immunity claim or plaintiff's substantive claim. *See Hill v. Dekalb County Regional Youth Detention Ctr.*, 40 F.3d 1176,

1186 (11th Cir. 1994) (finding of deliberate indifference necessarily precludes a finding of qualified immunity).[9]

3. Application of Law to Individual Defendants

a. Officer Mason

Plaintiff does not mention Officer Mason in her response to summary judgment. The only evidence regarding this defendant is that he responded to the scene where Jimmie Mason was arrested. The record does not establish when he got there, how long he was there or what he did. Thus, plaintiff has failed to prove that this defendant either knew of her decedent's alleged serious medical need or failed to provide medical treatment. Officer Mason is entitled to summary judgment based on plaintiff's failure to prove that he acted with deliberate indifference.

b. Officer Chambless

Chambless was the fast officer on the scene. He placed handcuffs on Jimmie Mason and spoke with him. He saw that Mason was sweating and breathing heavily. Mason complained to Chambless twice about his stomach hurting. Based on plaintiff's evidence, the Court must assume that Chambless knew that Mason suffered from seizures. Chambless asked the firemedics to examine Mason.

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9. In *Lancaster* the Eleventh Circuit implied, although it did not decide, that the level of specificity necessary for the law to be clearly established in the context of deliberate indifference to serious medical needs does not require that prior case law address the specific medical condition at issue. *Lancaster*, 116 F.3d at 1426 n.7.

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These facts do not support a claim of deliberate indifference against Chambless because there is no evidence that he failed or refused to provide medical treatment. In fact, he summoned the firemedics to check Mason out. Therefore, Chambless is also entitled to summary judgment on plaintiff's deliberate indifference claim

c. Officer Parmenter

Officer Parmenter arrived on the scene as Chambless was placing handcuffs on Mason. He helped get Mason to his feet. As with Chambless, the Court must assume that Parmenter knew that Mason suffered from seizures. Parmenter saw that Mason was sweating and breathing heavily. From the evidence presented, it does not appear that Parmenter had any dealings with Mason after helping him up from the ground. There were firemedics on the scene who were speaking with and appeared to be examining Mason. A reasonable factfinder could not say that Parmenter intentionally refused to provide medical treatment when it appeared that medical treatment was being rendered to Mason. Parmenter is entitled to summary judgment on the issue of deliberate indifference.

d. Officer Harvey

The Court must consider Officer Harvey's conduct both on the scene and at the jail to determine whether plaintiff can state a claim for deliberate indifference. Harvey arrived as Mason was being handcuffed. He walked away from Mason as the firemedics appeared to be examining him. When he walked back toward Mason a few minutes later,

the firemedics were walking away. Harvey took the firemedics statement that Mason was "okay to go" to mean that they had checked him out and found no problem.[10] Thus, even assuming Harvey knew Mason suffered from seizures, was sweating and breathing heavily, his conduct at the scene was not deliberately indifferent because he reasonably believed the Mason had been checked out by the firemedics and had no serious medical need.

Plaintiff contends that Harvey's conduct after he left the jail amounted to deliberate indifference in several respects. First, he contends that Harvey's failure to respond to Nurse Threadgill's question about what had happened as evidence of deliberate indifference. Evidently, plaintiff is contending that Harvey deliberately withheld medical information about a serious medical need and that doing so was tantamount to withholding treatment. However, plaintiff casts a much more sinister light on the events that the record would permit. Threadgill testified initially in her deposition that Harvey gave her "no response whatsoever as to what happened[.]" Threadgill depo. p. 37. When questioned more specifically whether Harvey responded at all, Threadgill stated that Harvey said "I don't know[.] He was okay, you know." *Id.*

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10. In the conclusion of her response to defendants' motion for summary judgment, plaintiff asserts that it is disputed whether the firemedics made this statement. Plaintiff makes no citation to the record to support her assertion. The Court has reviewed the portions of the firemedics' depositions submitted by plaintiff and has been unable to find any evidence to contradict Harvey's testimony.

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Even viewed in the light most favorable to plaintiff, the exchange between Threadgill and Harvey, as related by Threadgill, does not give rise to an inference that Harvey deliberately withheld information about Mason's medical condition. Threadgill's question, "What happened?" was a general one. While Threadgill apparently expected a more detailed answer than she received,[11] the question did not call for details. Officer Harvey's failure to respond to such a general question with specific details hardly equates to deliberately withholding medical care. Plaintiff's deliberate indifference claim is without merit insofar as it is based on this incident.

Plaintiff also asserts that Harvey acted with deliberate indifference by failing to summon an ambulance when he was unable to revive Mason at the jail and by failing to transport Mason to the hospital more quickly than he did. Harvey's failure to summon an ambulance cannot be considered a delay in obtaining treatment for Masons' serious medical need because Harvey called the nurse who was at the jail. Moreover, Harvey did not use lights and sirens to transport Mason because the nurse did not indicate there was any emergency. Consequently, Harvey did not act with conscious disregard when he failed to transport Mason to the hospital on an emergency basis.[12]

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11. Threadgill testified that she became upset because Harvey "gave me no response as to what was going on[.]" Threadgill depo. p. 37.

12. Harvey testified that he went straight from the jail to USA Medical Center.

For the foregoing reasons, the Court finds that the facts alleged by plaintiff do not establish that Officer Harvey was deliberately indifferent to Mason's serious medical needs. Consequently, Harvey is also entitled to summary judgment with respect to plaintiff's § 1983 claim.

c. Connick, Driskell & Adams

Because plaintiff's evidence with respect to each of these defendants is identical, the Court will consider plaintiff's deliberate indifference claims against these individuals jointly. Viewing the evidence most favorably to plaintiff, Connick, Driskell and Adams each had been told by a bystander that Mason was coming out of or going into a seizure and that he had stomach pains. They also observed that he was sweating and breathing heavily. They had been warned by Ms. Britton that they needed to get Mason to a doctor or a hospital. Nonetheless, they accepted Mason's negative responses without any attempt to further evaluate him.

The Court must first determine whether any of this information could be viewed as evidence of that Mason had a serious medical need. A serious medical need "is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for [medical] attention." *Hill v. Dekalb Regional Youth Detention Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994). Neither sweating and breathing heavily nor stomach pain would satisfy the foregoing definition of a serious medical need.[13] However, a seizure, or even the

13. Even plaintiff's expert admits that these symptoms alone have no particular significance.

imminent possibility of one, would fall into the latter category as a need so obvious that even a lay person would recognize the need for medical intervention.

Defendants do not contest that a seizure amounts to a serious medical need. Instead, they argue that any knowledge that Mason might be suffering from a seizure is irrelevant because he died of heart failure. Defendants rely on a much too literal reading of the Supreme Court's decision in *Farmer v. Brennan*, 511 U.S. 825, 128 L.Ed.2d 811 (1994). In that case, the Court held that deliberate indifference included a subjective, as well as an objective component so that "a prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.*, 511 U.S. at __, 128 L.Ed.2d at 825.[14] Because the actual harm was different from the risk of harm, defendants contend they could have drawn the necessary inference.

The argument defendants raise is actually a causation issue. Of course an inference of the risk of harm will be related to the risk itself. *See, e.g., Farmer*, 128 L.Ed.2d at 828-29 (knowledge may be inferred from fact that risk is obvious). Here, the obvious risk of harm was not the actual

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14. A defendant's subjective knowledge is "subject to proof in the usual ways, including inferences from circumstantial evidence, . . . and a factfinder may conclude that [the defendant] knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 128 L.Ed.2d at 818 (internal citations omitted).

cause of death. But there is evidence that the failure of these defendants to act in response to the risk of which they were aware, *i.e.*, that Mason may be suffering from a seizure, ultimately caused Mason's death. If defendants had taken Mason's vital signs, and there is evidence they would have done so for a patient who was having a seizure, then they would have recognized that Mason was in immediate danger of heart failure.

The Supreme Court's decision in *Farmer* supports the conclusion that the actual risk of harm must not be as specific as defendants argue. In *Farmer* the plaintiff was a transsexual who was attacked by another inmate after being placed in general population. Discussing the showing necessary to prove the subjective component of deliberate indifference, the Court stated:

> Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health", . . . and it does not matter whether the risk comes from a single source or multiple sources.

Farmer, 128 L.Ed.2d at 829. Likewise, these defendants cannot hide behind the fact that Mason died of something

other than the obvious risk when they could have prevented his death by treating that risk. Therefore, defendants Connick, Driskell and Adams are not entitled to summary judgment on the either issue of qualified immunity or the issue of their liability under the Fourteenth Amendment.

C. State Law

The only state law claim plaintiff asserts against these defendants is negligence. The defendants assert that they are entitled to immunity from suit under Ala. Code § 6-5-332 (1975), sometimes referred to as a "Good Samaritan" statute, which protects certain classes of persons from liability when they render emergency assistance. Defendants also assert that they are immune from suit under the state law doctrine of discretionary function immunity.

1. Immunity under Ala. Code § 6-5-332

These defendants claim immunity from liability that may arise from rendering emergency assistance to plaintiff's decedent based on the following statute:

> (a) when any doctor of medicine or dentistry, nurse, member of any organized rescue squad, member of any police or fire department, member of any organized volunteer fire department, Alabama-licensed emergency medical technician, intern or resident . . . , gratuitously and in good faith, renders first aid or emergency care at the scene of an accident, casualty, or disaster to a person injured therein, he or she shall not be liable

> for any civil damages as a result of his or her acts or omissions in rendering first aid or emergency care, nor shall he or she be liable for any civil damages as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

Ala. Code § 6-5-332 (1975). Plaintiff argues that the foregoing statute does not provide immunity in this situation because it only applies in situations where the protected individuals were off duty. Defendants, on the other hand, argue that the statute applies regardless of their duty status.

Unfortunately, Alabama courts have never had the occasion to apply this statute. The only reference to it, or more precisely to its predecessor, is found in *Beasley v. MacDonald Eng. Co.*, 287 Ala. 189, 249 So. 2d 844 (1971). In that case the Alabama Supreme Court, discussing the liability of one who gratuitously assumes a duty to act, stated:

> It was in recognition of this common-law theory of liability — i.e., that one who volunteers to act though under no duty to do so, is thereafter charged with the duty of acting carefully — that legislatures have passed the so-called Good Samaritan statutes abrogating the common law in certain circumstances. These statutes immunize volunteers acting gratuitously from any common-law liability for their acts or omissions at the scenes of accidents or in emergencies. See Title 7, § 121(l).[15]

15. This code section was the predecessor to § 6-5-332.

Beasley, 287 Ala. at 194, 249 So. 2d at 847. Thus, *Beasley* certainly implies that plaintiff's interpretation is correct.

Defendants argue, however, that by naming certain classes of individuals protected, the statute protects those persons when they render emergency aid in *any* situation, not just one where their participation is voluntary. Defendants cite a similar Maryland statute which the Maryland Supreme Court has interpreted as protecting emergency medical technicians working in the line of duty. The statute in that case stated:

> (a) A person licensed by the State of Maryland to provide medical care, who renders medical aid, or assistance for which he charges no fee or compensation: (1) at the scene of an emergency; (2) in transit to medical facilities; or (1) through communications with personnel rendering emergency assistance is not liable for any civil damages as the result of any professional act or omission by him not amounting to gross negligence.
>
> (b) A member of any State, county municipal or volunteer fire department, ambulance and rescue squad . . . has the same immunity as provided in subsection (a). . . .

Tatum v. Gigliotti, 321 Md. 623, 626, 583 A.2d 1062, 1063 (1991) (quoting Md. Code (1957, 1980 Repl. Vol.), Art. 43, § 132). Unfortunately for the defendants, it is the Alabama, not the Maryland, statute that this Court must interpret and apply.

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When interpreting a state statute, this Court must apply state rules of statutory construction. *Municipal Utilities Bd. v. Alabama Power Co.*, 21 F.3d 384, 387 (11th Cir. 1994).

> [Alabama's] fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural plain, ordinary and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.

IMED Corp. v. Systems Engineering Assocs. Corp., 602 So.2d 344, 346 (Ala. 1992).

There is no need to resort to a Maryland court's interpretation of a Maryland statute when the plain meaning of Alabama's statute is simple to discern. The Alabama statute applies to persons who act "gratuitously" while the Maryland statute applies to persons who charge no fee or receive no compensation.[16] The word "gratuitous" means "to act without cost *or obligation*." The American Heritage Dictionary (1973). Thus, if one has an obligation to act, then one does not act gratuitously. The classes of persons named in the Alabama statute have an obligation to respond to

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16. Another important distinction between the two statutes is the type of immunity provided. Persons granted immunity under the Maryland statute are only immune for acts of *negligence* not from acts which amount to gross negligence. The Alabama statute absolves those classes of persons named in the act from *all liability* arising from their acts or omissions.

emergency situations when they are on duty. Consequently, on-duty personnel do not act gratuitously. Because the firemedics in this case were on duty when they allegedly failed to render treatment to plaintiff's decedent, they are not entitled to immunity under §6-5-332.[17]

2. Discretionary Function Immunity

Both the police and firemedic defendants argue that they are entitled to discretionary function immunity. "Alabama law . . . extends a form of immunity, not absolute, to state, as opposed to municipal and county, executive officers who do not hold constitutional offices. This form of immunity is described as 'discretionary function' immunity." *Sheth v. Webster*, 145 F.3d 1231, 1237 (11th Cir. 1998). The state has enacted a statute extending discretionary function immunity to municipal police officers. Ala. Code § 6-5-338(a) (Supp. 1997). The Court can find no similar statute extending discretionary function immunity to municipal firefighters. Therefore, because they are not state employees and the legislature has not extended immunity to them, defendants Connick, Driskell and Adams are not entitled to summary judgment on the basis of discretionary function immunity.

Discretionary function immunity applies only to discretionary acts not taken wilfully, maliciously or in bad

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17. The only issue the *Tatum* court had to determine was whether the statute applied to a salaried Maryland emergency medical technician who does not charge a fee or compensation to the victim. *Id.*, 583 A.2d at 1062. His obligation, or lack of obligation, to act was irrelevant.

faith. "Discretionary acts have been defined as 'those acts as to which there is no hard and fast rule as to the course of conduct that one must or must not take and those acts requiring exercise in judgment and choice and involving what is just and proper.' " *Id.* at 1239 (quoting *Wright v. Wynn*, 582 So.2d 1, 2 (Ala. 1996)). Since plaintiff alleges only that the defendants were negligent — and not that they acted with malice, willfulness or bad faith — immunity turns on whether the police defendants were performing a discretionary function. *Phillips v. Thomas*, 555 So. 2d 81, 83 (Ala. 1989) (discretionary function immunity applies only to negligence claim).

Plaintiff asserts that the defendants were preforming a ministerial act, for which there is no immunity, as opposed to a discretionary function because there is a written police procedure to be followed when a prisoner is sick or injured. Written police policy states:

> 71.2.3 TRANSPORTATION OF SICK OR INJURED PRISONERS
>
> Any prisoner complaining of sickness or injury, or in the judgment of the officer appears to be sick or injured, whether complaining of the same or not, will be treated as follows:
>
> A. A Fire Department ambulance will be called to the location. . . .

Pltf.'s Ex. 11. Plaintiff does not attempt to demonstrate which of the four police defendants was responsible for following

this procedure or that any one of them negligently failed to perform this allegedly ministerial task. Moreover, the decision to apply the policy itself requires the exercise of judgment. It requires discretion to determine (1) whether a prisoner is complaining of sickness or injury[18] and (2) whether a prisoner *in the judgment of the officer* appears to be sick or injured. Because the Court is satisfied that defendants Mason, Chambless, Parmenter and Harvey were performing discretionary functions in dealing with the decedent's alleged complaints or symptoms of illness, the Court finds that these defendants are entitled to discretionary function immunity from plaintiff's state law negligence claim against them.

D. Conclusion

For the foregoing reasons, the Court finds that plaintiff has failed to present establish evidence from which a jury could determine defendants Chambless, Parmenter, Mason and Harvey were deliberately indifferent to the serious medical needs of decedent Jimmie Lee Mason. In addition, the Court is persuaded that, to the extent that they may have failed to render medical care to the decedent, defendants Chambless, Parmenter, Mason and Harvey were performing a discretionary function. Accordingly, the motion for

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18. The Court can envision situations where a prisoner might make a statement, *e.g.*, my head hurts, that could be interpreted either as a "complaint" of sickness or injury or simply as an expression of fact. Surely the policy does not contemplate that every time a prisoner makes a comment about his health a police officer must call an ambulance.

summary judgment by defendants Chambless, Parmenter, Mason and Harvey is hereby **GRANTED**.

Plaintiff has presented genuine issues of material fact with respect to her deliberate indifference claims against defendants Connick, Driskell and Adams. Because the Court finds the law with respect to deliberate indifference to have been clearly established at the time of the incident giving rise to this action, Connick, Driskell and Adams are not entitled to qualified immunity. The state law immunity claims asserted by these defendants fail because (1) the Good Samaritan statute does not apply to firemedics acting within the scope of their duties and (2) discretionary function immunity does not apply to municipal firefighters. Accordingly, the motion for summary judgment filed by defendants Connick, Driskell and Adams is hereby **DENIED**.

It is so **ORDERED**.

DONE this the 23d day of February, 1999.

s/ [illegible]
CHIEF DISTRICT JUDGE